IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Laxman Singh Vs. State of Raj.
S.B. CR. REVISION PETITION NO.993/2006

Against order dated 04.10.2006 passed by learned Additional Chief Judicial Magistrate No.2, Jodhpur in Criminal Regular Case No.326/2005.

Date of Order :: 8th November, 2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. P.R. Singh for petitioner.
Mr. Vishnu Kachhawaha, Public Prosecutor.

BY THE COURT:

By the present revision petition challenge has been made to the order passed by learned Additional Chief Judicial Magistrate No.2, Jodhpur in Criminal Regular Case No.326/2005 (State Vs. Laxman Singh) where by the learned trial court has rejected the application filed on behalf of the petitioner to allow him time to cross-examine the witnesses i.e. PW1 Dr. S.P. Sharma and PW2 Smt. Laxmi.

Issue notice to the respondent.

Learned Public Prosecutor Mr. Vishnu Kachhawaha accepts notice on behalf of the State.

At request of learned for the parties, the matter is finally disposed of at admission stage.

It has been contended by learned counsel for the petitioner that on 04.10.2006, the petitioner's counsel was suffering from fever therefore was not able to cross-examine the witnesses Dr.S.P. Sharma and Smt. Laxmi, wife of the petitioner and in this regard moved an application seeking adjournment and for providing opportunity to cross-examine the above witnesses was rejected. He submits that a matrimonial case is also pending and since criminal case is pending under Section 325 IPC and PW2 Smt. Laxmi is main witness, therefore, atleast one opportunity may be provided to the petitioner to cross-examine on payment of cost/expenses incurred in travelling from Gujarat to Jodhpur. He further submits that PW2 Smt. Laxmi often comes to Jodhpur for attending the matrimonial case and for other

reasons also and it is not a case where only for the present case she will be called, therefore, in the interest of justice one opportunity may be provided to cross-examine Smt. Laxmi and Dr. S.P.Sharma.

Learned Public Prosecutor has submitted that before the learned trial court assurance was given on behalf of the petitioner in the morning that cross-examination will take place after lunch but after lunch learned counsel for the petitioner did not cross-examine the witnesses, thus, there is no illegality in the order passed by the learned trial court and it does not require interference.

I have considered the submissions made before me.

It is correct that learned trial court has assigned reasons that in the morning it was assured that after lunch counsel will be available to cross-examine the witnesses but after lunch when the counsel appeared in the Court an application was moved seeking adjournment on account of illness. I do not want to go into the niceties of the fact as to

whether the petitioner's counsel was suffering from illness or not but at the same time consider proper this aspect of the matter that the petitioner and PW2 Smt. Laxmi, as stated at bar by learned counsel for the petitioner, are husband and wife and contesting matrimonial case and present case is under Section 325 IPC and this witness is an important witness to cross-examine and opportunity is required to be afforded her on the statement given in the interest of justice and for just decision of the case, therefore, I deem it proper to allow the revision petition on payment of cost, incurred by the witness PW2 for coming to Jodhpur from Gujrat.

Accordingly, the revision petition is allowed and the order dated 04.10.2006 passed by learned Additional Chief Judicial Magistrate No.2, Jodhpur in Criminal Regular Case No.326/2005 (State Vs. Laxman Singh) is quashed and set aside and the petitioner is permitted to cross-examine witnesses PW1 Dr. S.P.Sharma and PW2 Smt. Laxmi. The petitioner shall deposit a sum of Rs.1,000/- in the trial court as cots/travel expenses incurred by PW2 to attend the Court

on or before 14.11.2006, which will be paid to the witness PW2 Smt. Laxmi.

(SATYA PRAKASH PATHAK)J.

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